

Remarks

The Office has rejoined claims 10-13 into group I and made the restriction requirement final with respect to claim 14. Claims 3-4 and 12-13, however, are withdrawn as drawn to nonelected species. Applicants submit that at least claim 1 is a linking claim with respect to claims 3-4 and that at least claim 10 is a linking claim with respect to claims 12-13.

Claim 5 is objected to for failing to have appended SEQ ID NOs. to each mention of a specific sequence in the claim. Applicants have amended claim 5 to insert SEQ ID NOs. A new sequence listing also is enclosed here. The present specification provides the strain of HCMV which was amplified, as well as the primer sequences used in the amplification. Since both this strain and the sequence of pp65 are very well known in the art, including the start codon, one can easily determine the position and sequence of each of SEQ ID NOs:15-22 by translation of the publicly known sequence. The person of skill in the art would have possessed this knowledge. The written description requirement therefore is satisfied with respect to these sequences and no new matter is added. See Falkner v. Inglis, 448 F.3d 1357, 79 U.S.P.Q.2d 101 (Fed. Cir. 2006); Capon v. Eshhar, 418 F.3d 1349, 76 U.S.P.Q.2d 1078 (Fed. Cir. 2005). Applicants submit that the objection is overcome.


Claim 8 is rejected as indefinite for lack of antecedent basis for the phrase "said DNA adjuvant." Applicants have amended the claim with respect to dependency. The claim now depends from claim 7. Applicants submit that this rejection is overcome.

Claims 1, 2, 5, 6 and 9-11 are rejected as anticipated by Khanna et al. (U.S. 2005/0019344; hereinafter "Khanna"). This reference was filed as a PCT application June 26, 2002. The present application was filed as a provisional application June

25, 2002. Applicants submit that the Khanna reference does not qualify as prior art under 35 U.S.C. §102(e) because its filing date in the U.S. falls after the U.S. filing date of the present application. The rejection over this reference therefore is not proper. Applicants request the anticipation rejection be withdrawn.

Claims 7 and 8 are rejected as obvious over Khanna, discussed above, in view of Krieg et al. (WO/122972). The Khanna reference does not qualify as prior art, therefore this rejection also is not proper. Applicants request that the obviousness rejection be withdrawn.

Applicants now request reconsideration of the claims as amended.

RESPECTFULLY SUBMITTED,					
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